IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.342 OF 2007

M/s.Shamco Plastic Pvt. Ltd. .. Petitioner.
Versus
The New India Assurance Co. Ltd. .. Respondent.

Mr.H.H.Trivedi for petitioner.
Mr.R.Narichania i/b.Motiwalla & Co. for respondent.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 18th October, 2007.

P.C.:

1. This Arbitration Petition is directed against the Award made by the Sole Arbitrator on insurance claim.

2. The respondent is the Insurance Company and the petitioner is the claimant.

3. It is undisputed that the Arbitral Award allows the claim of the petitioner-claimant to the extent of Rs.13,78,320/- on account of damage suffered to their Windmill due to heavy cyclone in 1998. Further, the Insurance Company was directed to pay the above sum alongwith interest @9% per annum from the date of the Award till realisation.

4. However, the argument of the petitioner in support of this petition is that the Arbitrator ought to have awarded the claim in full. The curtailment of the claim

under the subject policy on the ground that the claimant has not been able to produce proof of payment is patently erroneous. It is contented that the Surveyor visited the site and submitted his report. Upon the deposition of the Surveyor, it was clear that the loss was suffered. In such circumstances, it was incumbent upon the Tribunal to award the entire amount claimed towards the damages. There was no warrant for deducting the claim on the ground that the job of repairs and replacement of the Windmill was entrusted to some contractors and the proof of payment was not to the satisfaction of the Arbitral Tribunal. My attention is invited to paragraph 16 of the Award and it is contended that in the light of the said findings, it is erroneous to assume that the claim must be granted only in part.

5. The next submission is that the Tribunal was obliged to grant interest also from the date of the reference till the date of the award. There is no warrant for refuting the claim of the petitioner towards the interest. No reasons are assigned. In such circumstances, the findings recorded on Issue No.5 at paragraph 28 of the Award deserves to be quashed and set aside.

6. With the able assistance of the learned counsel appearing for both sides, I have perused the subject Award. The reason for the Arbitral Tribunal not to award the claim in its entirety but restricting it to Rs.13,78,320/- appears to be obvious. When the claim arose out of the fact that the damage in cyclone to the Windmill was required to be repaired and for that purpose contractors were appointed, then, the claimant was bound to produce the material in that behalf. The material has not been produced. It was urged on behalf of the Insurance Company that full amount of the bills to three contractors were paid and, therefore, reimbursement in full is not permissible. That submission is accepted by relying upon the deposition of the witness, which is referred to in paragraph 20 of the Award. In such circumstances when the reimbursement was not permissible in full, in absence of material, then, the restricted claim as awarded cannot be faulted. The first submission, therefore, must fail.

7. The provisions relating to interest under Section 31 of the Arbitration and Conciliation Act, 1996 so also the subject policy have been perused by me. The learned Sole Arbitrator in his discretion has decided not to grant interest for the period prior to the date of determination

of the amount due. It is crystal clear that the amount was found to be due and payable only on adjudication by the Tribunal. Therefore, when the amount was crystalised, naturally, the direction was issued to pay interest on the said crystalised sum from the date of the Award till realisation. That is also granted at the prevailing rate, which is not in dispute. In such circumstances, the discretion exercised by the Arbitral Tribunal cannot be said to be such as to fall within the four corners of Section 34 of the Arbitration and Conciliation Act, 1996, enabling this Court to interfere.

8. The provisions in the Insurance Law Manual can be of no assistance in the peculiar facts of this case. Here, the Surveyor himself stepped in after considerable delay. In such circumstances, when an overall view on the claim has been taken consistent with the stipulations in the policy, there is no reason to interfere with the Award. Arbitration petition is, therefore, devoid of any merits and is accordingly dismissed.

(S.C.Dharmadhikari, J.)